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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,493	12/05/2003	Bernd Becker	9003-287US (PC 02 099 B U	9725
570	7590	04/15/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,493

Applicant(s)

BECKER, BERND

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/05/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to a process for producing a closure, classified in class 264, subclass 255.
  - II. Claims 5-14, drawn to a closure for ma medicine bottle, classified in class 215, subclass 247.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions (I) and (II) are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the cover material (5) could be placed in the groove surrounding the opening, and/or the sealing layer (4) could be placed in the cap (2), instead of by an injection molding process without material bonding.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group (I) is not required for Group (II), restriction for examination purposes as indicated is proper.
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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6. During a telephone conversation with Colleen Butcher on 06 April 2005 a provisional election was made with traverse to prosecute the invention of group (II), claims 5-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-4, group (I), are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Priority***

7. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 limits, "wherein the sealing layer is welded flush to the cap portion..."

It is unclear how the sealing layer is welded to the cap, when claim 5 limits the sealing layer makes contact "free from any material bond."

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen US 4,501,372 in view of Heyn US 4,407,424.

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Hansen '785 teaches a tear-open closure for a container, comprising a cap portion with at least one opening and an elastic, puncturable sealing layer covered by a cover element.

Hansen '785 does not teach the cover releasably connected to the container by an interlock encircling the opening.

Heyn '424 teaches a means for securing a cover to a container opening, comprising a pull-plug interlocked into a container groove encircling the opening. Examiner notes col. 1, line 10, whereby Heyn '424 teaches the invention is related to scored end panels. The openings of Hansen '785 are formed by score lines (6) and (7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Hansen '785, fixing the removable closures to the cap by interlocking the closures to an opening encircling the container opening, as taught to be a mechanical equivalent to frangible removable panels, by Heyn '424.

Regarding claim 10, Examiner notes the closure arrangement of Heyn '424 requires the closure tab to be formed of a plastic, while the can end is formed of metal. In col. 2, lines 40-43, Heyn '424 teaches this facilitates the cutting of the plastic closure upon removal. It would therefore be obvious, within the spirit of the teaching, to form the closures of Hansen '785, of a material softer than those of the cap, so as to promote the fracture of the closures upon removal. Accordingly, because the cap is formed of a polypropylene – a thermoplastic – it would be obvious to form the closure of a softer material, such as a duroplastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable closures of Hansen '372, forming them of a soft plastic, such as a duroplastic, motivated by the benefit of promoting fracture of the closure interlock portion, as taught by Heyn '424. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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12. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen US 4,501,372 in view of Heyn US 4,407,424, as applied above to claim 5, in further view of Howard et al. US 4,746,017.

Hansen '372 does not teach the gripping tabs extending at right angles and centrally located.

Howard '017 teaches a removable cover disk (28) with a tab (29) extending vertically and centrally from the disk, for removal of the disk portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure gripping tabs of Hansen '372, providing the centrally located and vertically-extending tab taught by Howard '017, motivated by the benefit of providing an equivalent means of allowing a user to remove the closure to expose the pierceable sealing layer.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,223,918	US 5,379,908
US 6,050,435	US 5,016,770
US 5,823,373	US 4,892,222
US 5,678,713	US 4,512,486
US 5,467,878	US 3,838,785

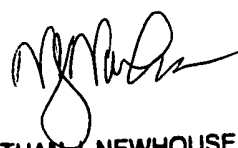
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
4/13/05